

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

KEITH LINELL BELL,

Petitioner,

Case Number 07-14481-BC
Honorable Thomas L. Ludington

v.

CAROL R. HOWES,

Respondent.

**ORDER ADOPTING REPORT AND RECOMMENDATION, GRANTING
RESPONDENT'S MOTION FOR SUMMARY JUDGMENT, DISMISSING PETITION
FOR HABEAS CORPUS WITH PREJUDICE, DENYING PETITIONER A
CERTIFICATE OF APPEALABILITY AND DENYING PETITIONER LEAVE TO
PROCEED IN FORMA PAUPERIS ON APPEAL**

This matter is before the Court on a report issued by Magistrate Judge Paul Komives on October 16, 2008. The magistrate judge recommends granting Respondent's motion for summary judgment and dismissing Petitioner's application for a writ of habeas corpus because Petitioner's application is barred by the one-year statute of limitations contained in 28 U.S.C. § 2244(d). As of today's date, no party has filed any objections to the magistrate judge's report and recommendation. The failure to file objections to the report and recommendation waives any further right to appeal. *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Likewise, the failure to object to the magistrate judge's report releases the Court from its duty to independently review the record. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). However, the Court agrees with the reasoning and conclusion of the magistrate judge, and will dismiss the habeas petition with prejudice.

The Court will also deny Petitioner a certificate of appealability. A federal district court may

grant or deny a certificate of appealability when the court issues a ruling on the habeas petition. *Castro v. United States*, 310 F.3d 900, 901 (6th Cir. 2002). In order to obtain a certificate of appealability, a prisoner must make a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). When a court dismisses a habeas petition on procedural grounds, the applicant is required to show “that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (citations and quotations omitted). Accordingly, the Court will deny Petitioner a certificate of appealability because he has failed to make a substantial showing of the denial of a federal constitutional right, and reasonable jurists would not find the Court’s procedural ruling debatable. The Court will also deny Petitioner leave to appeal in forma pauperis, because the appeal would be frivolous. *See* Fed. R. App. P. 24(a).

Accordingly, it is **ORDERED** that the magistrate judge’s report and recommendation [Dkt # 11] is **ADOPTED**, that Respondent’s motion for summary judgment [Dkt. # 7] is **GRANTED** and that Petitioner’s application for a writ of habeas corpus [Dkt. # 1] is **DISMISSED WITH PREJUDICE** as untimely.

It is further **ORDERED** that Petitioner is **DENIED** a certificate of appealability, and that Petitioner is **DENIED** leave to proceed in forma pauperis on appeal.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: November 5, 2008

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on November 5, 2008.

s/Tracy A. Jacobs
TRACY A. JACOBS